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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 207.

THE IOWA RAILROAD LAND COMPANY,
Plaintiff in Error,

vs.

CLAUDE F. BLUMER.

IN ERROR TO THE SUPREME COURT OF IOWA.

BRIEF FOR PLAINTIFF IN ERROR

BY

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STATEMENT OF THE CASE.

This is a suit in equity brought by defendant in error, who was plaintiff in the courts below to quiet title to a certain 40 acres of land, situated in Woodbury County, Iowa.

PLEADINGS.

PETITION OR BILL.

Defendant in error, by paragraph 2 of his petition or bill, claims title by prescription solely and only. (Record, 1.)

ANSWER AND REPLY.

Plaintiff in error, defendant below, by its answer, deraigns title from the United States specially set up under Act of

Congress of May 15, 1856, granting lands to the State of Iowa to aid in the construction of a line of railroad from Dubuque to Sioux City and alleges that the line of road was built, the lands earned and duly conveyed to defendant in error. (Record, 2 and 3; pars. 3 and 4.) This equitable title is admitted by the reply of defendant in error. (Record, 4; pars. 2 and 3.)

Plaintiff in error,, by its answer, also shows that plaintiff's claim or title arises through a claim of one John Carraher under the timber culture act, which was cancelled by the land department July 11, 1891. (Record, 3; par. 7.)

This is admitted by the reply of the defendant in error, and he denies that the timber culture claim mentioned in the answer was the sole or only source of claim or right of title to said real estate by said Carraher. (Record, 4; par. 4.)

By an amendment to his reply, defendant in error sets up a subsequent entry in 1888 under the Timber Culture Act. (Record, 5; par. 8.)

By supplemental answer and cross-bill, filed May 28, 1904, plaintiff in error pleads a certification of the land under the railroad grant made January 24, 1903, after the commencement of this suit, and a patent from the state under the railroad grant, dated February 2, 1903, and prays to have title to the land quieted in it. (Record, 6.)

THE EVIDENCE.

It is admitted that the line of the railroad referred to in the pleadings "was completed in accordance with the Acts of Congress and the Legislature of Iowa by the 1st day of January, 1872, and that the said road is now operated by the Illinois Central Railroad Company." (Record, 17.)

Defendant in error pleaded the filing of the map of definite location of the line of railroad in 1856, and that the land in controversy is within the six miles limits of the grant. (Record, 5; pars. 2 and 3.) This is not denied and the certifica-

tion under which plaintiff in error claims shows that the land is within the six miles limits. (Record, 27; Exhibit 1.)

The map of definite location shows that the railroad extends diagonally through the land in question. (Record, 30, bottom.)

CARRAHER'S POSSESSION AND CLAIM OF TITLE.

Carraher applied to enter the land under the Timber Entry Act, October 2, 1883. His application was rejected by the local land office October 30, 1883, for conflict with the railroad grant. He appealed November 24, 1883, and December 3, 1883, the Commissioner of the General Land Office affirmed the action of the local officers in rejecting Carraher's application. Thereupon Carraher appealed to the Secretary of the Interior, and his appeal was submitted on August 25, 1887. (Record, 18, bottom, and 21, letter of commissioner.)

June 17, 1891, the Secretary of the Interior affirmed the action of the local officers and the Commissioner in rejecting Carraher's application. (Record, 23 and 24.)

Pending these proceedings and upon a subsequent application Carraher was by the receiver of the local land office permitted to file on the land in controversy under the Timber Culture Act on the 31st day of May, 1888. (Record, 35.) June 2, 1888, his attorney forwarded the receiver's receipt by letter, saying to him; "You can take possession and proceed to comply with the timber culture laws." (Record, 36; Exhibit J.)

This action of the local receiver was held to be without authority, and the entry was cancelled July 11, 1891, at the time the final decision of the Secretary of the Interior on Carraher's first application was transmitted to the local land office. (Record, 23, letter of Commissioner.) And the cancellation was duly entered by the register and receiver of the local office under date of July 11, 1891. (Record, 30; Exhibit 5.)

From that day the record shows no semblance of color or claim of title on the part of Caraher. It is shown that Carraher

planted some trees on the land in 1888, 1889, or 1890. (Record, 8, near top, and 16, top.) It is not shown that he planted a tree or made an effort to comply with the Timber Culture Act after the decision of 1891, holding the land not subject to entry under that Act and cancelling the entry which the receiver had permitted without authority. He simply remained in possession, a naked trespasser, cultivated a portion of the land or rented it, until he executed a quit claim deed to the defendant in error on October 26, 1901, for the highly meritorious consideration of five dollars. (Record, 12; Exhibit B, middle of page.) Thereafter the defendant in error remained in possession, but he does not testify or pretend that he bought the land in good faith, that he believed that Carraher had a title, or that he had any belief of title or right or made any claim of title or right, on his part.

The record is wholly silent as to any claim of good faith on the part of Carraher, or any claim of a belief on his part of a right to the land in connection with his possession.

His son testified: "My father claimed to own the land at the times I have mentioned." (Record, 8.)

Another witness, who worked for him, says: "During the years 1896 and 1897 I heard a good many times Mr. Carraher speak of owning this 40." (Record, 9, bottom.)

Another witness, who rented of him, says: "Mr. Carraher always claimed to own this land in my business relations with him that year" (1899). "He did not say anything about claiming to own it but he spoke of it as his 40." (Record, 11, top.) "There are no buildings on the 40." (Record, 11, bottom.)

There are other like claims of ownership on Carraher's part shown in the record, but nothing more.

No witness testifies that he ever professed a claim or belief of right under his cancelled timber culture entry. Carraher himself was deceased prior to the inception of this litigation. (Record, 7, bottom.) His attorney, Judge Wakefield, says of him: "He owned a half section of land or something in that

neighborhood out there; he was a man of a good deal of natural intelligence. I think he had a quick grasp of anything that related to his interests. A reasonably intelligent farmer." (Record, 16, bottom; 17, top.) "He had an 80 that joined this 40 on the north." (Record, 8, middle.) "In 1898 he lived on another place of his in Concord Township, in the same section as this 40." (Record, 11, last half.)

WHY PATENT UNDER RAILROAD GRANT WAS DELAYED.

1. The certification and patent under the railroad grant was delayed by a swamp land claim of the State of Iowa not decided until 1878. (Record, 18, middle; 24, letter of McFarland, Commissioner.)

2. By Carraher's application to enter under timber culture act not decided until June 17, 1891, and transmitted to local officers July 11, 1891. (Record, 23; and see also Record, 18 and 19.)

3. By Carraher's claim that railroad grant was fully satisfied; the grant was not adjusted until April 9, 1891. (Record, 19, middle; Volume 12, Decisions of Department of Interior, 374.)

4. The certification was afterwards withheld for required certificates from railroad division, mineral division, and reexamination as to swamp land records. (Record, 27 and 28.)

Mr. S. S. Burdette, attorney for the railroad grant, was unable to secure an earlier certification. (Record, 19, 20 and 21.)

JUDGMENTS OF COURTS BELOW.

The trial court awarded the land to defendant in error and entered a decree quieting his title thereto. (Record, 33, bottom.)

On appeal the Supreme Court of Iowa affirmed the judg-

ment of the trial court. (Record, 42.) Thereupon plaintiff in error sued out this writ of error.

The Supreme Court of Iowa held that the statute of limitations of that state began to run in 1891, while the title under the railroad grant was still withheld by the government, and that plaintiff below, defendant here, had acquired title by prescription. (See Opinion, Record, 37 to 42) Reported 129 Iowa, 32.

ASSIGNMENT OF ERRORS.

The plaintiff in error says there was manifest error upon the face of the record in this:

1. The court below erred in holding that adverse possession or title by prescription could be predicated upon possession made and continued while the land department withheld title under the railroad grant for the purpose of administering the grant.

2. The court below erred in holding that adverse possession or title by prescription could be predicated upon Carraher's entry under the Timber Culture Act made in 1888 at a time when refusal to permit such entry had on Carraher's appeal been affirmed by the commissioner of the general land office and was pending on his appeal before the Secretary of the Interior.

3. The court below erred in refusing to give effect to the order of the land department cancelling Carraher's entry under the Timber Culture Act of May 31, 1888.

4. The court below erred in holding that title by prescription could be predicated upon Carraher's entry under the Timber Culture Act on May 31, 1891, after the same had been cancelled by the land department, and after the land department had held on Carraher's appeal that the land was not subject to entry under the Timber Culture Act.

5. The court below erred in holding that Carraher's entry under the Timber Culture Act gave color of title as against the railroad grant.

6. The court below erred in holding that Carraher took and maintained possession in good faith under his timber culture entry after the same was, to his knowledge, decided by the land department to be contrary to law and unauthorized by law, and after the same was cancelled by said department.

7. The court below erred in holding that title by prescription against the government grant and patent could be predicated upon mere claim of right to acquire the land under the Timber Culture Act.

8. The court below erred in holding that the Iowa statute of limitations giving title by prescription began to run from the year 1891, notwithstanding the land department still withheld certification of the land and retained the title in the government while administering the grant.

9. The court below erred in holding that Carraher, a naked trespasser, could acquire title by prescription while such title was withheld from the railroad grant by the land department and remained vested in the United States.

POINTS OF LAW AND FACT.

I.

FEDERAL QUESTIONS.

1. The claim of plaintiff in error, specially set up and pleaded, of title to the land under a grant and certification the equivalent of a patent from the United States, has been denied by the court below. This presents a federal question.

2. Its like claim that title by prescription could not be acquired against it while certification was refused under the railroad grant and while the title remained in the United States under decisions, rulings and acts of officers of the United States Government who acted under authority of the United States, has in like manner been denied. This presents a federal question.

3. The decision below that adverse possession may be predicated upon a known unauthorized entry notwithstanding its cancellation by officers of the land department denies to plaintiff in error the benefit of this action of such officers; and this presents a federal question.

4. In like manner the decision of the court below that Carraher had color of title notwithstanding the cancellation of his entry by the officers of the land department and their decisions that the land was not subject to entry under the Timber Culture Act presents a federal question.

5. This applies also to the question of good faith as to any claim of title under his timber culture entry.

6. It is submitted that all of the assignments of error present federal questions of like nature and character.

II.

NO CLAIM TO TITLE IN FEE.

Carraher's claim under the timber culture entry was not a claim to title in fee which alone can furnish the basis for title by prescription.

Ricard v. *Williams*, 7 Wheat., 59.

Nor can a prescriptive title arise with no claim of right.

Harvey v. *Tyler*, 2 Wall., 328.

Society for Prop. of Gosp. v. *Town of Paulet*, 4 Pet., 480.

A claim under a sheriff's deed void for want of jurisdiction will not support title by prescription.

Walker v. *Turner*, 9 Wheat., 541.

There can be no color of title in an occupant of land who does not hold under an instrument or proceeding or law purporting to transfer the title or to give the right of possession.

Nor can good faith be affirmed of a party in holding adversely where he knows he has no title and that under the law he can acquire none.

Deffeback v. *Hawke*, 115 U. S., 392-407.
Sparks v. *Pierce*, 115 U. S., 412.
Litchfield v. *Sewell*, 97 Iowa, 251.
Hayes v. *United States*, 175 U. S., 260.

Carraher confessed his knowledge and understanding that his entry of 1888 was cancelled and void by never taking steps to prove up or acquire title under his timber culture entry claim. He was entitled to do this in 1896, if at all. Not until that time could the statute run in any case. He continued in possession as a naked trespasser under a known void entry.

Nor has defendant in error done more than this, or attempted to acquire title under the Timber Culture Act.

The case is a clear one of no color of title, and of bad faith in claiming, with full knowledge of no color of title; of bad faith in mere claims.

III.

NO GOOD FAITH CLAIM OF RIGHT.

It is the settled construction of the statute of limitations of Iowa relating to lands, that title by prescription cannot be acquired in the absence of an honest, *bona fide*, good faith claim of title.

Litchfield v. *Sewell*, 97 Iowa, 260.
Wright v. *Keithler*, 7 Iowa, 92.
Smith v. *Young*, 89 Iowa, 340.
Clark v. *Sexton*, 122 Iowa, 313.
Snell v. *Mecham*, 80 Iowa, 55.

No such good faith is shown on Carraher's part. The facts to which attention has been called, *supra*, conclusively show bad faith on his part.

IV.

COURTS CANNOT INTERFERE WHILE TITLE IS WITHHELD BY LAND DEPARTMENT, IN ADMINISTRATION OF THE GRANT.

Humberg v. *Avery*, 195 U. S., 498, and cases there cited.

Oregon v. *Hitchcock*, 202 U. S., 70.

V.

STATUTE OF LIMITATIONS WILL NOT RUN WHILE GOVERNMENT WITHHOLDS TITLE.

Nor can the statute of limitations run or title by prescription have its inception while the land department withholds the title in the administration of the grant.

Gibson v. *Choteau*, 13 Wall., 92.

Redfield v. *Parks*, 132 U. S., 246, and cases there cited.

Morrow v. *Whitney*, 95 U. S., 557.

North. Pac. Ry. Co. v. *Traill Co.*, 115 U. S., 600.

Ry. Co. v. *Prescott*, 16 Wall., 603.

Ry. Co. v. *McShane*, 22 Wall., 444.

Churchill v. *Swords*, 478 Iowa, 473.

Durham v. *Hoosman*, 88 Iowa, 36.

Dickerson v. *Yetzer*, 53 Iowa, 681.

Grant v. *Ry. Co.* 54 Iowa, 673.

U. S. v. *Montana Mnfg. Co.*, 196 U. S., 577.

VI.

CANCELLATION OF TIMBER CULTURE ENTRY CAN NOT BE COLLATERALLY ASSAILED.

As to this, see—

Brown v. *Gurney*, 201 U. S., 193.

Steele v. *Smelting Co.*, 106 U. S., 447.

Smelting Co. v. *Kemp*, 104 U. S., 636.

ARGUMENT.

I.

TITLE BY PRESCRIPTION.

It seems obvious that where the title has been withheld by the land department in the orderly administration of the grant, and in the settlement of questions connected therewith, the state statute of limitations can not run, and title by prescription can not have its inception, until the title finally passes from the government.

In such case the rule obtains that—

> "With the legal title when transferred goes the right to possess and enjoy the land and it would amount to a denial of the power of disposal in Congress if these benefits which follow upon the acquisition of that title could be forfeited because they were not asserted before that title was issued."
>
> *Gibson* v. *Chouteau*, 13 Wall., 92.

See also cases cited in point V of brief, *supra*, including those from Iowa, where this doctrine has been repeatedly recognized.

The fact clearly shown by the record that the title was withheld for the purpose of the administration of the grant distinguishes the case at bar from

Deseret Salt Co. v. *Tarpey*, 142 U. S., 241.

Toltec Range Co. v. *Cook*, 191 U. S., 532,

and other like cases.

Those decisions were where the equitable title was undisputed and certain, and the legal title might have been acquired on application. In the case at bar, on the contrary, the equitable right was drawn in question continuously, and the beneficiaries of the railroad grant were unable to procure the legal title by certification or patent until 1903, although the record shows that they were engaged in continuous efforts to do so.

To hold that the statute of limitations will run under such

circumstances, or title by prescription have its inception and become complete, is to nullify and abrogate a patent of the United States before the party entitled to it can procure its issuance by the most diligent and continuous efforts.

Under such circumstances it is submitted that the doctrine of *Gibson* v. *Chouteau* must apply. The distinction between this and decisions of the other type above referred to is too broad to require elucidation or to be overlooked.

NO COLOR OF TITLE NOR GOOD FAITH CLAIM OF RIGHT.

II.

Nor was there color of title or good faith claim of right upon which to predicate title by prescription.

Thus it is said regarding the Iowa statute of limitations and title by prescription under it:

> "No such rule obtains in favor *of one actually knowing that he or she has no title or claim. An adverse possession must be in good faith.*"
>
> *Smith* v. *Young*, 89 Iowa, 340.

In the case at bar Carraher had the fullest knowledge that the land was not subject to entry under the Timber Culture Act. He knew, therefore, that his attempted entry of 1888 was absolutely void, and it is submitted he must be held to have known that this entry was cancelled in 1891.

Undoubtedly it was this knowledge which deterred him from ever attempting to prove up and secure title under the Timber Culture Act.

Under the decisions of Iowa, then, as well as under the decisions of this court cited in Point II of brief, *supra*, there was no semblance of color or claim of title upon which to predicate the running of the statute or the inception of title by prescription. Furthermore, there must have been good faith on Carraher's part. As to this a recent Iowa decision announces the accepted doctrine:

> "We are committed to the doctrine that possession to be adverse must have been held to be in good faith. If one knows that he has no title or claim, if his possession is merely wanton, his occupation, no matter how long continued, will not ripen into a title. To hold otherwise would be to convert the statute of limitations into a cover for fraud instead of giving to it the proper application as a statute of repose."
>
> *Clark* v. *Sexton*, 122 Iowa, 313.

Obviously a patent of the United States when issued cannot be overturned by mere naked possession, or a bad faith entry upon the land which the patent purports to convey. Other Iowa decisions cited in Point III of brief, *supra*, maintain the same doctrine. It is the settled construction of the statute of Iowa.

Nor can the defendant in error, in order to make some showing of color of title, collaterally assail the action of the land department in cancelling Carraher's attempted entry of 1888.

See cases, Point VI of brief, *supra*.

Carraher, therefore, certainly knew that he was a naked trespasser. His possession under these circumstances could not affect the title conveyed by the grant and the certification thereunder. The language of this court is peculiarly appropriate:

> "But neither in a separate suit in a federal court, nor in an answer of ejectment in a state court, can the mere occupation of the demanded premises by plaintiffs or defendants for the period prescribed by the statute of limitations of the state, be held to constitute a sufficient equity in their favor to control the legal title subsequently conveyed to others by the patent of the United States, without trenching upon the power of Congress in the disposition of the public lands."
>
> *Gibson* v. *Choutcau*, 14 Wall., 103.

The Act of Congress of March 3, 1887, as amended by the Act of February 12, 1896, imposes upon the land department the duty of adjusting the railroad grant under which plaintiff

in error claims. The department did not complete this adjustment and have the final certificates made showing the land clear from the swamp land grant and from the Mineral Act until 1903, retaining the matter *in fieri* until that date in spite of all efforts under the grant to procure the title earlier.

On the other hand, the record shows that Carraher was not a poor and meritorious settler, attempting to secure a home in good faith under the Timber Culture Act; but he was a thrifty and prosperous farmer owning adjoining lands. With no color of title or claim of right, as he well knew, he entered on a venture relative to the 40 in controversy, and leasing the land for many years at a remunerative rental, thus making a good thing anyway and taking his chances as to final results.

The quit claim deed to defendant in error for $5 well illustrates the idea which all the parties had as to the lawfulness or fairness of this enterprise. It was reserved to the decree of a court to transform this $5 venture and speculation into a lawful title to a tract of land worth thousands of dollars.

It is respectfully submitted that this is not the mission of the courts, and that the judgment below ought to be reversed.

CHAS. A. CLARK,
WM. G. CLARK.

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APPENDIX TO BRIEF FOR PLAINTIFF IN ERROR. STATUTES REFERRED TO IN ARGUMENT.

CHARLES A. CLARK,
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(20,098.)

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Appendix to Brief for Plaintiff in Error. Statutes Referred to in Argument.

11 Stat. at L., 9.

An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi river, to a point on the Missouri river near the mouth of the Platte river; from the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of inter-

section with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel across the said State to the Missouri river, from the city of Dubuque to a point on the Missouri river near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold and [to] which pre-empion rights have attached, as aforesaid, together with the sections, and parts of sections, designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Iowa for the use and purpose aforesaid: *Provided,* That the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads: *Provided, further,* That the lands hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further,* That any and all lands heretofore reserved to the United States, by any act of Congress, or in any

other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted,* That the section and parts of sections of land which, by such grant, shall remain to the United States within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted,* That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted,* That the lands hereby granted to said State shall be disposed of by said State only in manner following; that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold, and so from time to time until said roads are completed; and if any of

said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 4. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same."

Approved May 15, 1856.

13 Stat. at L., 95.

An act to amend an act entitled "An act making a grant of land[s] to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May fifteen, eighteen hundred and fifty-six.

SEC. 1. Relates to line from Davenport to Council Bluffs.

"SEC. 2. *And be it further enacted*, That whenever such new location shall have been established, the said railroad company shall file in the General Land Office at Washington a map, definitely showing such new location; and the Secretary of the Interior shall cause to be certified and conveyed to said company from time to time, as the road progresses, out of any public lands now belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption claim or right of homestead settlement has not attached, and on which a *bona fide* settlement and improvement has not been made under color of title derived from the United States or from the State of Iowa, within six miles of such newly located line, an amount of land per mile equal to that originally authorized to be granted to aid in the construction of said road by the act to which this is an amendment; and if the amount of land granted by the original act to aid in the construction of said railroad shall not be found

within the limit of six miles from such line, then such selections may be made along such line within twenty miles thereof: *Provided*, That the said company shall not be entitled to, and shall not receive, any land under this grant which is situate within fifteen miles of the line of the Burlington and Missouri River railroad, as indicated by the map of said road, now on file in the General Land Office.

SEC. 3. Relates to line from Burlington to Missouri river.

SEC. 4. Relates to line from Clinton to Council Bluffs.

* * * "*Provided, however*, That no lands shall be conveyed to any company or party whatsoever, under the provisions of this act and the act amended by this act, which have been settled upon and improved in good faith, by a *bona fide* inhabitant, under color of title derived from the United States or from the State of Iowa adverse to the grant made by this act or the act to which this act is an amendment. But each of said companies may select an equal quantity of public lands as described in this act within the distance of twenty miles of the line of each of said roads in lieu of lands thus settled upon and improved by *bona fide* inhabitants in good faith under color of title as aforesaid."

SEC. 5. Relates to line from Clinton to Council Bluffs.

"SEC. 6. *And be it further enacted*, That the Dubuque and Sioux City Railroad Company may so far change their line between Fort Dodge and Sioux City as to secure the best route between those points; said change shall not impair the right to, nor change the location of, their present land grant A map of the change shall be filed with the Commissioner of the General Land Office within one year after the passage of this act.

SEC. 7. *And be it further enacted*, That all of the conditions and limitations contained in the act to which this act is an amendment, and not expressly changed by this act, shall attach to and run with the grants made by this act, except as the said conditions and limitations have been modi-

fied, and may hereafter be modified, by the General Assembly of the State of Iowa.

SEC. 8. *And be it further enacted,* That no lands hereby granted shall be certified to either of said companies until the governor of the State of Iowa shall certify to the Secretary of the Interior that the said company has completed, ready for the rolling stock, within one year from the first day of July next, a section of not less than twenty miles from the present terminus of the completed portion of said railroad, and in each year thereafter an additional section of twenty miles; but the number of sections per mile originally authorized shall be certified to each company, upon proof as aforesaid of the completion of the additional sections of the road as aforesaid; and upon the failure of either company to complete either section as aforesaid, to be annually built, the portion of the land remaining uncertified shall become subject to the control and disposition of the legislature of the State of Iowa, to aid in the completion of such road.

SEC. 9. *And be it further enacted,* That all lands hereafter certified to either of the land-grant railroads in said State, and lying opposite any completed section of such road, shall be offered for sale by the company to which they shall be certified within three years from the completion of such section, if then certified; and if not, then within three years from the date of such certificate at reasonable prices; and if not all sold within that period then during the fourth year all such lands remaining unsold shall be exposed to public sale, after previous notice posted at the county seat of the county in which such lands shall be situated, to the highest bidder, and in tracts not exceeding one hundred and sixty acres each."

Approved June 2, 1864.

15 Stat. at L., 38.

An act extending the time for the completion of the Dubuque and Sioux City railroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time for completing a line of railroad from Dubuque to Sioux City, in the State of Iowa, for the construction of which lands were granted in alternate sections to said State by act entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of railroads in said State," approved May fifteenth, eighteen hundred and fifty-six, be, and the same is, extended until the first day of January, eighteen hundred and seventy-two, subject to the reverter mentioned in said act at the expiration of the time herein limited: *Provided*, [That] said road shall be constructed on the most practical route by way of Webster City and Fort Dodge to Sioux City, which route shall be at all points within the limits of said land grant, and the same shall be completed to Fort Dodge on or before the first day of July, eighteen hundred and sixty-nine, and thereafter at the rate of not less than forty miles each year; and the said road shall be constructed, operated, and maintained as one continuous and unbroken line of road from Dubuque to Sioux City; and no lands shall be disposed of, or patented, or certified for said purposes more than forty miles in advance of the point to which said road may be constructed from time to time.

Approved March 2, 1868.

Revision, Iowa, 1860, pp. 215–218.

An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled an Act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State, approved May 15th, 1856.

SECTION 1299. (1.) *Be in enacted by the General Assembly of the State of Iowa*, That the lands, rights, powers and privileges, granted to, and conferred upon, the State of Iowa, by the act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads, in said State, approved May 15th, 1856," be and the same are hereby accepted upon the terms, conditions and restrictions, contained in said act of Congress.

* * * * * * *

SEC. 1302. (5.) That so much of the lands, interest, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri river at or near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted and conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 1303. (6.) The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next, after the passage of this act, and maps or plots, showing such lines and routes, shall be filed in the office of the Governor of the State of Iowa, and also in the office of the secretary of state of the State of Iowa. It shall be the duty of the governor, after affixing his official

signature, to file such map in the department having the control of the public land in Washington; such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by said companies within the limits and along any part of the line aforesaid, the governor shall from time to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents and the costs, expenses and charges attendant upon and occasioned by making such selections, shall be fixed, regulated, paid and borne by each of said railroad companies respectively, upon and for its own line.

SEC. 1305. (8.) The grants aforesaid are made to each of said companies respectively, upon the express condition, that in case either of such railroad companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D., 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and *to resume* all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 1310. (13.) The said companies shall each severally assent to and accept the provisions of this act, by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the secretary of state, and be by the secretary recorded in the book by him kept for the recording of articles of association.

Laws of Iowa, 1868, Ch. 26, pp. 29–31.

An act resuming certain rights conferred upon the Dubuque and Pacific (now Dubuque and Sioux City) Railroad Company by an act approved July 14, 1856, and acts amendatory thereof, and to repeal certain laws in relation thereto.

Whereas, by an act of Congress, approved May 15, 1856, there was granted to the State of Iowa, certain land to aid in the construction of certain railroads in said State, upon certain terms, conditions and restrictions under which said lands might be disposed of; and

Whereas, the General Assembly of the State of Iowa, by an act approved July 14, 1856, accepted said grant of lands upon the terms, conditions, and restrictions contained in said act of Congress, and transferred and granted to the Dubuque and Pacific (now Dubuque and Sioux City) Railroad Company that portion of said lands granted by said act of Congress, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri river, at or near Sioux City with a branch from the mouth of the Tete Des Morts, to the nearest point on said road, in consideration on the part of said company that it would complete and equip within the time therein specified; and

Whereas, said company having failed to complete and equip said road, as required in said act, obtained by an act of the General Assembly of Iowa, approved April 7, 1862, an extension of time for the completion of said road in further consideration of the release of certain lands in said last-mentioned act described; and

Whereas, the said Dubuque and Pacific (now Dubuque and Sioux City) Railroad Company, has failed and refused to execute the said releases; and has failed to complete and equip the number of miles of their said road as by said acts

of transfer and extension they were required to have completed and equipped at this time; thereby, at the option of the State, annulling all their right and title to the lands so transferred to said company by said act of July 14, 1856, excepting only one hundred and twenty sections of said land for each twenty miles of said road, now completed and equipped, whereby the State has the right to resume all the right, title, and interest in and to the remainder and residue of the land originally granted to said company; and

Whereas, the good faith of the State, in carrying into execution the trust conferred upon her by said act of Congress, requires that the remaining land and all title to the same should be resumed, to the end that the road, to aid which the same was granted, may be speedily completed; Now therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That all the right, title or interest in and to the land heretofore granted, or intended to be granted, to the Dubuque and Pacific (now Dubuque and Sioux City) Railroad Company, by an act approved July 14, 1856, entitled "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress, entitled 'An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, approved May 15, 1856,'" and acts amendatory and supplementary of the same, be and the same are hereby absolutely and entirely resumed by the State: *Provided, however,* That nothing in this act contained shall be construed to affect or in any manner impair the title of said company to the one hundred and twenty sections of said land for each and every twenty miles of their road which is now completed and equipped.

SEC. 2. The fifth section of said act, approved July 14, 1856, and all other acts and parts of acts inconsistent with this act, are hereby repealed.

SEC. 3. This act, being deemed of immediate importance, shall take effect and be in force from and after its publica-

tion in the *Iowa State Register*, published at Des Moines, and *The Iowa North-West*, published at Fort Dodge, Iowa.

Approved March 10, 1868.

Laws of Iowa, 1868, chapter 124, pp. 164–167.

The Dubuque and Sioux City Land Grant.

An act to legalize, confirm and carry out a contract between the Dubuque and Sioux City Railroad Company and the Iowa Falls and Sioux City Railroad Company, and to extend the time for completing the said railroad from Dubuque to Sioux City, to grant certain lands to the Dubuque, Bell[e]vue, and Sabula Railroad Company for the building of the Tete Des Morts branch, and for other purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That a contract entered into between the Dubuque and Sioux City Railroad Company of the first part, and the Iowa Falls and Sioux City Railroad Company of the second part, transferring so much of the Dubuque and Sioux City railroad as remains to be constructed, together with the franchises, right of way, depot grounds, and other appurtenances of said road to be completed, also transferring all right and title of the said Dubuque and Sioux City Railroad Company to so much of the lands granted by Congress to aid in the construction of said road as shall appertain to, or be legally applicable to the construction of the uncompleted part of the Dubuque and Sioux City railroad as aforesaid, except as to the lands hereinafter granted to the Dubuque, Bellevue and Sabula Railroad Company, be and is hereby legalized and confirmed.

SECTION 2. That the *pro rata* of six sections of land per mile, reserved by said contract to the Dubuque and Sioux City Railroad Company, and the *pro rata* of six sections per mile, conveyed by said contract to said Iowa Falls and Sioux City Railroad Company, shall be adjusted between said com-

panies as follows, to wit: The land actually conveyed to third parties shall be set apart to said Dubuque and Sioux City Company, not exceeding six sections per mile for the road now built, and if over that number of acres of land have been conveyed, the excess over that amount shall be taken off of the west end of the last installment of the lands so conveyed; and in case less than that amount of lands have been conveyed as aforesaid, then a sufficient amount shall be taken to make up such *pro rata* from that portion of the land grant next adjoining and immediately west, as near as practicable, to the lands last conveyed by said Dubuque and Sioux City Railroad Company.

SECTION 3. That a *pro rata* of six sections per mile of said land grant be and the same is hereby granted to and conferred upon the Dubuque, Bellevue and Sabula Railroad Company, to aid in the construction of said road, known as the Tete Des Morts branch, required to be built by the act of Congress granting said lands to the State of Iowa: *Provided,* That said company shall not encumber or dispose of said lands until the said branch road shall be completed and open for business, and that said branch shall be completed within two years from the first day of January next. Said lands shall be of an average quality and value of so much of said lands granted by the United States as now remain undisposed of, and the governor of Iowa shall select or cause to be selected, the land hereby granted to said Dubuque, Bellevue and Sabula Railroad Company, or cause the same to be reserved from lands outside of the six-mile limits of said grant, and upon completion of said branch, as above provided, he shall execute a patent for said lands to said company.

SECTION 4. That so much of said land grant as is applicable to the uncompleted portion of the road as aforesaid, west of Iowa Falls, excepting the lands hereby granted to said Dubuque, Bellevue and Sabula Railroad Company, is hereby granted to and conferred upon the said Iowa Falls and Sioux City Railroad Company, subject to the terms and conditions of the act of Congress granting the said lands, dated the

fifteenth day of May, A. D. 1856, and the act amendatory thereto, and the act of Congress passed the present session; and also subject to the terms and conditions of this act as herein expressed as follows, to wit: The road shall be completed as a first-class road from Iowa Falls on the route now surveyed, located, and partly graded, through Webster City and Fort Dodge, and the depot buildings shall be erected on the grounds heretofore donated by the people of said towns for that purpose, and shall be completed thence to Sioux City, which route shall be at all points within the limits of the said land grant. The track of said road shall be laid with a good substantial rail, weighing not less than fifty-six pounds per lineal yard. The road shall be completed to Fort Dodge by the 1st day of July, 1869, the time now fixed by act of Congress; one-half of the balance within one year from that time, and the remainder before the first day of January, A. D. 1872; and said road, when any twenty miles shall be completed, shall be subject to the lease of the Illinois Central Railroad Company, transferred to the Iowa Falls and Sioux City Railroad Company, and shall be operated as one continuous and unbroken through line of railroad from Dubuque to Sioux City.

SECTION 5. Said lands so granted, as aforesaid, to the Iowa Falls and Sioux City Railroad Company, shall be patented by the governor to said company as the same shall be earned by the building of said road, but no patent shall be issued by him for any portion of said lands until at least seventy-five miles of road shall be completed, and "no patent shall be made for any lands more than forty miles in advance of the point to which said road may be constructed from time to time," as provided by said act of Congress. No patent shall be made for any lands located within fifty miles of Sioux City, until said company shall have its entire road completed to Sioux City, except for such road as said company may cause to be built and operated from Sioux City eastward, and when said company shall have forty miles

of road built and operated from Sioux City eastward, then this restriction shall cease, and such lands may be patented for any road built by said company; and no patent shall include lands situate in more than one county, and such patent shall be, by said company, recorded in the county where said lands lie, and a certified copy of the record of the same may be used as evidence with the same effect as the original. And in case any of said lands hereby granted are now, and were on the first day of January last, occupied by actual settlers residing thereon and improving the same, upon such settler making proof to the satisfaction of the register of the State land office of such settlement and improvement, he shall be entitled to purchase not exceeding one-quarter section of land of the State at the rate of $2.50 per acre, and when such land shall have been earned by the extension of said road, upon the payment to the said company of the said sum, the governor shall execute a patent to such actual settler for said land.

SECTION 6. The legislature shall have the power to resume the lands not earned at the time of such resumption, on default of said company to build said road to Fort Dodge by the first day of July, 1869, or any portion of the road within the time limited herein, or in case they shall be satisfied that said company is not pushing forward the work on said road with reasonable diligence, so as to warrant the belief that the whole line will be completed to Sioux City by the first day of January, 1872.

SECTION 7. The said Iowa Falls and Sioux City Railroad Company shall signify their acceptance of the terms and conditions of this act, by a written instrument, signed by the president of said company, to be filed with the governor within thirty days after the passage of this act. * * *

Approved April 7, 1868.